IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. No.4041/2005

PETITONER

Harsh Jain
Aged about 17 years
S/o D.C. Jain,
Minor through Natural Guardian
Father D.C. Jain
Aged about 45 years
S/o Dhanraj Jain
R/o M.I.G. 389,
Padmanabhpur Durg (C.G.)

P.R. No. 4338/05
Presented by Advocate Pankaj Shukla
dated 30-8-05

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Versus

RESPONDENT

1. State of Chhattisgarh
Through the Director
Medical Education
Government of Chhattisgarh Raipur

2. Guru Ghasidas Vishwavidyalaya
Through Vice-chancellor
Bilaspur (C.G.)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS OF MANDAMUS AND CERTIORARI AND FOR OTHER SUITABLE WRITS AND DIRECTIONS:

Bilaspur (C.G.)

3. Medical Council of India,
Through Registrar Ewan-E-Galib Marg,
New Delhi

4. Pt. Jawahar Lal Nehru Medical College,
Through Dean, Raipur (C.G.)

XI-HC-78

(95)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....WP No. 4041/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	29.9.2005 Shri P. Diwakar, Sr. Advocate with Shri Rahul Jha, Advocate for the petitioner. Shri Sandeep Dubey, Govt. Advocate for respondent Nos.1 & 4. Shri Amrito Das, Advocate for respondent No.2. Miss Samta Jain, Advocate for respondent No.3. Shri S.L. Adile- Director, Medical Education & Dr. Jitendra Tiwari, Officer In-charge of the case are present in Court. Shri Adile has also filed the affidavit in pursuance of the Court's order dated 28.9.2005. The petitioner has preferred this writ petition challenging the action of respondent No.1 dated 28.8.2005 whereby admission to the petitioner has been refused in Pt. Jawaharlal Nehru Medical College, Raipur (hereinafter referred to as ' Medical College, Raipur'). The case of the petitioner is that he appeared in the Pre-Medical Test, which was held for admissions in M.B.B.S. courses to the academic session 2005-06. In that test the petitioner secured 51st position in the combined merit list and after counselling, as per merit, the petitioner was admitted in the Chhattisgarh Institute of Medical Sciences, Bilaspur (hereinafter referred to as 'CIMS') against a free seat. After the admission of the petitioner in the CIMS, two seats from All India Quota seats meant for Medical College, Raipur were	

(96)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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reverted back to be filled up by the Medical College, Raipur as those seats were not filled through CPMT examination. After reversion of those seats to the Medical College, Raipur vide Annexure P-3 the petitioner was called by the respondents to appear in the counselling to be held on 28.8.2005. However, when the petitioner appeared in the counselling admission was refused to him in the Medical College, Raipur on the ground that he has already been granted admission in the CIMS against a free seat. Further case of the petitioner is that the petitioner secured 51st position in the merit list and after reversion of All India Quota seats to the Medical College, Raipur he was entitled for admission in the Medical College, Raipur and it was not within the competence of the respondents to refuse the admission on the ground that the petitioner has already been admitted in the CIMS.

Return has already been filed on behalf of the respondents in which same ground has been raised that as the petitioner has already been admitted in the CIMS, therefore, he is not entitled for admission in the Medical College, Raipur. Moreover, Rule 7 of Pre-medical Test Rules specifically prohibits the change of medical college by a student who has already been admitted in any other medical college.

I have heard the learned counsel for the parties.

Learned Senior Advocate for the petitioner argued that in Note No.2 of Clause-5 of letter dated 22.8.2005 (Annexure P-3) it has been

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

made clear that those students, who have taken admission in the dental/medical college and in case his tuition fee is more then he will be entitled to seek admission in a dental/medical college where less tuition fee is charged and in view of this clause, the petitioner was entitled for admission in Medical College, Raipur. Moreover, when seats were reverted back to the Medical College, Raipur from All India Quota and the petitioner being at Sr. No.51 in the combined merit list was entitled for admission in the Medical College, Raipur as such, he ought to have been given admission, but the respondents have refused to give admission on the irrelevant and non-existent grounds.

On the other hand, learned Government Advocate for respondent Nos.1 & 4 argued that Rule 7 of Chhattisgarh Chikitsha Tatha Dant Chikitsha Snatak Pravesh Pariksha Niyam, 2003 prescribes that allotted college, course and seat at the time of counselling shall not be changed and the candidate will be required to deposit the whole fee after the counselling. He further argued that in view of the affidavit dated 29.9.2005 filed by the Director, Medical Education two seats from All India Quota were reverted back to the Medical College, Raipur and one seat of the State quota was remained vacant that is why the letter of counselling was sent to every candidate according to the merit list including the petitioner. However, the petitioner was refused admission on the ground that he has already been admitted in the CIMS

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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against a free seat. He further argued that in view of the judgment of the Hon'ble Apex Court rendered in **Mridul Dhar and another V. Union of India** reported in **AIR SCW 3239** the petitioner is not entitled for change of college.

Having heard learned counsel for the parties, I have perused the record and also considered the judgment of the Hon'ble Apex Court.

The limited question, which requires consideration by this Court, is that whether the petitioner was entitled to seek admission in the Medical College, Raipur inspite of the fact that he has already been admitted in CIMS, Bilaspur.

It is an admitted position that for giving admissions in M.B.B.S. courses to the Medical College, Raipur as also CIMS, Bilaspur a combined pre-medical test was conducted by the Board of Secondary Education, Raipur and thereafter, a combined merit list was prepared. Out of that combined merit list, firstly 82 seats of Medical College, Raipur were filled and thereafter, 82 seats of CIMS. Bilaspur were filled from the remaining candidates of that combined merit list and as the petitioner's position in that combined merit list was not within the first 41 seats of unreserved category, therefore, he could not secure admission in the Medical College, Raipur. The petitioner has been granted admission against a free seat in the CIMS, Bilaspur. However, later on out of 15% All India Quota seats two seats were reverted back

(99)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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to the Medical College, Raipur and one seat of State Quota also remained vacant, therefore, for filling of these three seats the Medical College, Raipur issued notice through publication in the newspapers as also issued individual letters to the candidates including the petitioner and in pursuance of that the petitioner appeared before the counselling.

A combined brochure for Medical College, Raipur & CIMS, Bilaspur inviting applications from the candidates for admission in M.B.B.S. courses was issued by Chhattisgarh Board of Secondary Education, Raipur under the instructions of the Government and in Clause-7 at Page-16 of said brochure it has been mentioned that the college, course and seat allotted at the time of counselling shall not be changed in any circumstance and the candidate shall be required to deposit the whole fee after counselling is over.

One of the grounds behind not permitting the change of college is that if any candidate is allowed to change the college then the college where that candidate was studying will be further required to fill up that seat by counselling and in that process the last date for admission, as per order of the Hon'ble Apex Court, may be elapsed and ultimately that seat will remain un-filled.

In view of the above, when the petitioner got admission in the CIMS, Bilaspur in the first counselling, as he was not entitled for

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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admission in the Medical College, Raipur as per his merit position, I am of the considered opinion that in view of the provisions of Clause-7 of the said brochure the petitioner was not entitled for change of college.

In paragraph-6 of Mridual Dhar's case the Hon'ble Apex Court has held that;

> "The continued second counselling would be confined to only those, as per merit, who have not already been admitted in the MBBS Course in any of the Government Medical College in the country. If a student has already been admitted there would be no question of such a student being permitted counselling again so as to change the medical college with a view to get admission in some other medical college. The students who, as a result of the counselling already held, have taken admission in Dental Colleges would, however, be permitted to participate in the counselling for getting a chance for admission in the MBBS on the merit position."

It has further been held that:

> ".. We make it clear that those admitted in MBBS would not be permitted to change the college. Those who have taken admissions in Dental College would also not be permitted to change one Dental College to another Dental College..."

XI-HC-78

(101)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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	-7- Therefore, in view of the above judgment of the Hon'ble Apex Court also the petitioner was not entitled to change the college. As far as the argument advanced by learned Sr. Counsel for the petitioner that in letter dated 22.8.2005 issued to the petitioner calling for counselling it has been mentioned that a candidate, who is admitted in a dental/medical college where he is paying more fees, will be entitled to take admission in any other dental/medical college where he is required to pay less fee is concerned, I am afraid that how this has been written by the Director, Medical Services against the spirit of Rule-7 referred in above of the said brochure. Against Rule 7 none of the official including the Director, Medical services were entitled to change that conditions independently. Therefore, I do not find any substance in the argument advanced by learned Sr. Counsel for the petitioner. In the result, the petition of the petitioner is liable to be dismissed and accordingly, it is dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	
Roshan/-		

24/10/05